

**TARTER KRINSKY & DROGIN LLP**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
YACHI CHEN,

Plaintiff,

-against-

NEW YORK UNIVERSITY, NEW YORK  
UNIVERSITY SCHOOL OF MEDICINE and  
WENBAIO GAN,

Defendants.  
-----X

Civil Case No.  
08 CV 2499

**ANSWER**

Defendants, New York University ("NYU"), New York University School of Medicine (NYUSOM") and Wenbiao Gan ("Dr. Gan") (collectively "Defendants"), by their attorneys Tarter Krinsky & Drogin LLP, as and for their Answer to Plaintiff's Complaint allege as follows:

**Nature of the Action**

1. Admit that this is an action for sex discrimination and retaliation under the statutes alleged in Paragraph "1" of the Complaint and that Plaintiff seeks the relief demanded therein, but deny any relief is warranted.

**Jurisdiction and Venue**

2. Admit that jurisdiction of this Court is invoked pursuant to the statutes alleged, as set forth in Paragraph "2" of the Complaint, but deny any jurisdiction exists against Dr. Gan under Title VII of the Civil Rights Act of 1964, and refer all other issues of law to this Court for its determination.

3. Deny that any unlawful acts or discriminatory practices were committed, as alleged in Paragraph "3" of the Complaint, but admit that venue in the Southern District of New York is proper.

4. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph "4" of the Complaint.

5. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph "5" of the Complaint.

**Parties**

6. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph "6" of the Complaint.

7. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph "7" of the Complaint.

8. Admit the allegations contained in Paragraph "8" of the Complaint.

9. Admit the allegations contained in Paragraph "9" of the Complaint.

10. Admit the allegations contained in Paragraph "10" of the Complaint.

11. Deny the allegations contained in Paragraph "11" of the Complaint, and refer all questions of law to the Court.

12. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph "12" of the Complaint and refer all questions of law to the Court.

13. Admit the allegations contained in Paragraph "13" of the Complaint.

14. Deny the allegations contained in Paragraph "14" of the Complaint.

**Statement of Facts**

15. Deny the allegations contained in Paragraph "15" of the Complaint, except admit that Plaintiff commenced employment on or about January 5, 2004.

16. Deny the allegations contained in Paragraph "16" of the Complaint in the form alleged, except admit Plaintiff was directly supervised by Dr. Gan and worked exclusively within the research laboratory under his direction.

17. Admit the allegations contained in Paragraph "17" of the Complaint.

18. Deny the allegations contained in Paragraph "18" of the Complaint in the form alleged, except admit Plaintiff was requested to work on four research projects.

19. Admit the allegations contained in Paragraph "19" of the Complaint.

20. Deny the allegations contained in Paragraph "20" of the Complaint, except admit that at certain times Plaintiff's primary responsibility was the KV3.2 Knock-Out Project.

21. Deny the allegations contained in Paragraph "21" of the Complaint in the form alleged except admit that a goal of the Knock-Out Project was to publish a scholarly research article.

22. Deny the allegations contained in Paragraph "22" of the Complaint in the form alleged.

23. Deny the allegations contained in Paragraph "23" of the Complaint.

24. Deny the allegations contained in Paragraph "24" of the Complaint.

25. Deny the allegations contained in Paragraph "25" of the Complaint in the form alleged except admit that Plaintiff did receive certain positive feedback from Dr. Gan.

26. Deny the allegations contained in Paragraph "26" of the Complaint, except admit that at times Dr. Gan praised Plaintiff and advised her she was hardworking and responsible.

27. Deny the allegations contained in Paragraph "27" of the Complaint.

28. Admit the allegations contained in Paragraph "28" of the Complaint.

29. Admit the allegations contained in Paragraph "29" of the Complaint.

30. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph "30" of the Complaint, except admit that plaintiff alleges that she gave birth on or about January 26, 2006.

31. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph "31" of the Complaint, except admit that Plaintiff advised she had developed an infection.

32. Deny the allegations contained in Paragraph "32" of the Complaint, except admit that Plaintiff returned to the lab on or about April 10, 2006.

33. Deny the allegations contained in Paragraph "33" of the Complaint.

34. Deny the allegations contained in Paragraph "34" of the Complaint.

35. Deny the allegations contained in Paragraph "35" of the Complaint.

36. Admit the allegations contained in Paragraph "36" of the Complaint.

37. Deny the allegations contained in Paragraph "37" of the Complaint.

38. Deny the allegations contained in Paragraph "38" of the Complaint.

39. Deny the allegations contained in Paragraph "39" of the Complaint, except admit Dr. Gan met with Plaintiff approximately once every two weeks to discuss research data.

40. Deny the allegations contained in Paragraph "40" of the Complaint, except admit Dr. Gan addressed Plaintiff in a civil and professional manner.

41. Deny the allegations contained in Paragraph "41" of the Complaint, except admit that Dr. Gan had expressed some satisfaction with Plaintiff's progress prior to her leave.

42. Deny the allegations contained in Paragraph "42" of the Complaint in the form alleged.

43. Deny the allegations contained in Paragraph "43" of the Complaint.

44. Deny the allegations contained in Paragraph "44" of the Complaint.

45. Admit the allegations contained in Paragraph "45" of the Complaint.

46. Deny the allegations contained in Paragraph "46" of the Complaint, and refer the Court to Dr. Gan's email dated August 8, 2006 for its contents.

47. Deny the allegations contained in Paragraph "47" of the Complaint.

48. Deny the allegations contained in Paragraph "48" of the Complaint.

49. Deny the allegations contained in Paragraph "49" of the Complaint.

50. Deny the allegations contained in Paragraph "50" of the Complaint.

51. Deny the allegations contained in Paragraph "51" of the Complaint.

52. Deny the allegations contained in Paragraph "52" of the Complaint.

53. Deny the allegations contained in Paragraph "53" of the Complaint.

54. Deny the allegations contained in Paragraph "54" of the Complaint.

55. Deny the allegations contained in Paragraph "55" of the Complaint.

56. Deny the allegations contained in Paragraph "56" of the Complaint.

57. Admit the allegations contained in Paragraph "57" of the Complaint.

58. Deny the allegations contained in Paragraph "58" of the Complaint.

59. Deny the allegations contained in Paragraph "59" of the Complaint.

60. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph "60" of the Complaint, except admit that Plaintiff met with Dr. Tillman, NYUSOM's Postdoctoral Program Coordinator on or about September 11,

2006, but deny that Plaintiff advised Dr. Tillman concerning alleged inappropriate and discriminatory conduct by Dr. Gan.

61. Deny the allegations contained in Paragraph "61" of the Complaint, except admit that Plaintiff requested Dr. Tillman to intervene on her behalf.

62. Admit the allegations contained in Paragraph "62" of the Complaint.

63. Deny the allegations contained in Paragraph "63" of the Complaint.

64. Deny the allegations contained in Paragraph "64" of the Complaint.

65. Deny the allegations contained in Paragraph "65" of the Complaint, except admit that Plaintiff had not been the subject of employee discipline.

66. Deny the allegations contained in Paragraph "66" of the Complaint in the form alleged, except admit that based upon Plaintiff's statement that she would be leaving in four to six months NYU would be terminating her employment.

67. Deny the allegations contained in Paragraph "67" of the Complaint in the form alleged.

68. Deny the allegations contained in Paragraph "68" of the Complaint, except admit that Dr. Tillman sent Dr. Gan a template for an appointment expiration letter.

69. Deny the allegations contained in Paragraph "69" of the Complaint.

70. Deny the allegations contained in Paragraph "70" of the Complaint.

71. Deny the allegations contained in Paragraph "71" of the Complaint, and refer the Court to NYUSOM's post doctoral handbook for its contents.

72. Deny the allegations contained in Paragraph "72" of the Complaint, except admit that Plaintiff was not provided a formal re-appointment letter.

73. Deny the allegations contained in Paragraph "73" of the Complaint, except admit references to the period of five years of postdoctoral status, and refer the Court to the letter in issue for its content.

74. Deny the allegations contained in Paragraph "74" of the Complaint in the form alleged, and refer the Court to the Handbook in issue for its content.

75. Deny the allegations contained in Paragraph "75" of the Complaint.

76. Deny the allegations contained in Paragraph "76" of the Complaint.

77. Deny the allegations contained in Paragraph "77" of the Complaint in the form alleged.

78. Deny the allegations contained in Paragraph "78" of the Complaint.

79. Deny the allegations contained in Paragraph "79" of the Complaint.

80. Deny the allegations contained in Paragraph "80" of the Complaint, and refer the Court to NYUSOM's personnel documents for their content.

81. Deny the allegations contained in Paragraph "81" of the Complaint.

82. Admit the allegations contained in Paragraph "82" of the Complaint.

83. Deny the allegations contained in Paragraph "83" of the Complaint.

84. Deny the allegations contained in Paragraph "84" of the Complaint.

85. Deny the allegations contained in Paragraph "85" of the Complaint.

86. Deny the allegations contained in Paragraph "86" of the Complaint.

87. Deny the allegations contained in Paragraph "87" of the Complaint.

88. Deny the allegations contained in Paragraph "88" of the Complaint.

89. Deny the allegations contained in Paragraph "89" of the Complaint.

90. Deny the allegations contained in Paragraph "90" of the Complaint.

91. Deny the allegations contained in Paragraph "91" of the Complaint, except admit that Plaintiff had unexplained absences from the lab.

92. Deny the allegations contained in Paragraph "92" of the Complaint.

93. Deny the allegations contained in Paragraph "93" of the Complaint.

94. Deny the allegations contained in Paragraph "94" of the Complaint.

95. Deny the allegations contained in Paragraph "95" of the Complaint.

96. Deny the allegations contained in Paragraph "96" of the Complaint.

97. Deny the allegations contained in Paragraph "97" of the Complaint.

98. Deny the allegations contained in Paragraph "98" of the Complaint.

99. Deny the allegations contained in Paragraph "99" of the Complaint.

#### **COUNT I**

100. Defendants repeat, restate and reallege each and every response set forth in Paragraphs "1" through "99" above as if set forth herein again at length.

101. Deny the allegations contained in Paragraph "101" of the Complaint.

102. Deny the allegations contained in Paragraph "102" of the Complaint.

#### **COUNT II**

103. Defendants repeat, restate and reallege each and every response set forth in Paragraphs "1" through "102" above as if set forth herein again at length.

104. Deny the allegations contained in Paragraph "104" of the Complaint.

105. Deny the allegations contained in Paragraph "105" of the Complaint.

#### **COUNT III**

106. Defendants repeat, restate and reallege each and every response set forth in Paragraphs "1" through "105" above as if set forth herein again at length.



107. Deny the allegations contained in Paragraph "107" of the Complaint.

108. Deny the allegations contained in Paragraph "108" of the Complaint.

109. Deny the allegations contained in Paragraph "109" of the Complaint.

**COUNT IV**

110. Defendants repeat, restate and reallege each and every response set forth in Paragraphs "1" through "109" above as if set forth herein again at length.

111. Deny the allegations contained in Paragraph "111" of the Complaint.

112. Deny the allegations contained in Paragraph "112" of the Complaint.

113. Deny the allegations contained in Paragraph "113" of the Complaint.

**COUNT V**

114. Defendants repeat, restate and reallege each and every response set forth in Paragraphs "1" through "113" above as if set forth herein again at length.

115. Deny the allegations contained in Paragraph "115" of the Complaint.

116. Deny the allegations contained in Paragraph "116" of the Complaint.

117. Deny the allegations contained in Paragraph "117" of the Complaint.

**COUNT VI**

118. Defendants repeat, restate and reallege each and every response set forth in Paragraphs "1" through "117" above as if set forth herein again at length.

119. Deny the allegations contained in Paragraph "119" of the Complaint.

120. Deny the allegations contained in Paragraph "120" of the Complaint.

121. Deny the allegations contained in Paragraph "121" of the Complaint.

**AS A FIRST AFFIRMATIVE DEFENSE**

122. The Complaint fails to state a claim upon which relief may be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

123. This Court lacks subject matter jurisdiction over the claims against Dr. Gan under Title VII of the Civil Rights Act of 1974, as amended.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

124. At all times Defendants acted in good faith without reckless disregard of Plaintiff's rights.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

125. Upon information and belief, certain of Plaintiff's claims are barred in whole or in part by unclean hands, waiver, and estoppel.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

126. Upon information and belief, certain of Plaintiff's claims are time barred in whole or in part.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

127. Worker's Compensation is the exclusive remedy for certain of Plaintiff's claims.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

128. NYU and NYUSOM had policies and procedures to prevent and remedy employment discrimination and Plaintiff negligently failed to utilize them.

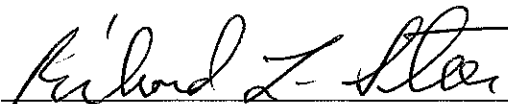
**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE**

129. Attorneys' fees and punitive damages are not available under the New York Human Rights Law.

**WHEREFORE**, Defendants demand judgment dismissing the Complaint in its entirety together with the costs, expenses and attorneys' fees in this action and such other relief as this Court may deem just.

Dated: New York, New York  
May 14, 2008

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